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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,368	09/23/2003	Takafumi Noguchi	Q75436	9196

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EXAMINER

CHOI, JACOB Y

ART UNIT	PAPER NUMBER
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2885

MAIL DATE	DELIVERY MODE
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01/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/667,368

Applicant(s)

NOGUCHI, TAKAFUMI

Examiner

Jacob Y. Choi

Art Unit

2885

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-8 and 10-23.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed January 7, 2008 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "... wherein a minimum light-emission value is equal to or less than 50% of a maximum light emission value when white light is emitted from said light emitting portion"), the Examiner has carefully identified the boundaries of the protection sought by the applicant and to understand how the claims relate to and define what the applicant has indicated is the invention. However, current claim language only expresses an ambiguous light-emission value that is equal to or less than 50% of the maximum light emission value. It is not straightforward to determine the precise meaning behind the phrase "maximum light emission value" and "minimum light emission value". The originally filed specification does not further define its precise meaning or definition. Also, a broad range of 50% of a maximum light emission value do not differentiate from the cited prior art teachings. See *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). *Kobori* (USPN 6,327,554) teaches the equivalent structure and how change in the thickness of films forming an organic EL device changes the spectra and luminance of light emitted out of the device. To further clarify, *Kobori* states the correlation between the minimum light emission value and the spectra and luminance in column 2, lines 10-60 "... the changes in the thickness of films forming an organic EL device give rise to changes in the spectra and luminance of light emitted out of the device. In order to use this device with a display device, it is desired that characteristic variation ascribable to them to be reduced as much as possible. Never until now, however, is any argument adduced about to what degree the optical thickness is controlled ... which enables light to be effectively taken out of even a structure comprising many reflective surface". Thus, the Examiner has properly provided a prima facie case of obviousness with regards to claim(s). Claims are properly rejected under 35 USC § 103.

Note: it is noted that the features upon which applicant relies (i.e., "... the minimum light-emission value corresponds to a valley portion of the light-emission spectrum in proximity to the peak portion ... the values at the peak portion and the valley portion near the peak portion") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)..

Continuation of 13. Other: The proposed amendment will be entered since they are deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

A handwritten signature in black ink, appearing to be "John", is located in the lower right quadrant of the page.